



# CITY OF NEWTON, MASSACHUSETTS

## Department of Planning and Development

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David B. Cohen  
Mayor

Public Hearing Date: July 10, 2007  
Land Use Action Date: **T.B.D.**  
Board of Aldermen Action Date: September 17, 2007  
90-Day Expiration Date: October 8, 2007

DATE: July 6, 2007

TO: Board of Aldermen

FROM: Michael Kruse, Director of Planning and Development  
Nancy Radzevich, Chief Planner  
Jean Fulkerson, Principal Planner  
Alexandra Ananth, Planner

SUBJECT: **Petition #202-07 EDEN SIFF & LAUREN ZUKER SIFF** petition for a SPECIAL PERMIT/SITE PLAN APPROVAL for a change of grade in excess of 3 feet to construct a single-family house at Lot #4, KESSELER WAY, Ward 8, on land known as Sec 82, Blk 37, Lot 82, containing approximately 21,038 sf of land in a district zoned SINGLE RESIDENCE 3.

CC: Mayor David B. Cohen

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will consider in its discussion at a subsequent Working Session.

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### EXECUTIVE SUMMARY

**The petitioners are seeking a special permit for a greater than 3 foot change in grade in order to construct a 11,233 sq. ft. single-family residence on Lot #4, within the Kessler Woods subdivision in Oak Hill. The proposed design of the single-family dwelling requires significant re-grading at the side and rear of the property. It appears that the proposed fill may be necessary, based on the design and location of the proposed structure, to meet the height and story limitations within a Single Residence District as well as to provide level rear and side yard space.**

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## **I. BACKGROUND**

The subject property is located within the "Kessler Woods" subdivision, which was approved by the Planning and Development Board, acting as the Board of Survey, on August 11, 2004. The approved subdivision contains seven lots (Lots 1-7) with access on the new subdivision roadway known as "Kessler Way," and two lots (Lots 8 & 9) with access off of Harwich Road.

In 2005 and 2006, the Board of Aldermen granted special permits to allow for grade changes in excess of 3 feet on four other lots within this subdivision at 6, 7, 12, and 17 Kessler Way. Recently, the Land Use Committee recommended approval (5-0-0; Ald. Vance, Fischman, and Merrill absent) for another special permit for a greater than 3 ft. change in grade for the abutting property, Lot 3 (*Petition #163-07*); action by the Board of Aldermen is expected on Monday, July 9, 2007. Single-family dwellings are either completed or under construction on three of these lots.

## **II. ELEMENTS OF THE PETITION**

The petitioners are requesting a special permit to alter the grade of the subject property by more than 3 feet in order to construct a single-family dwelling in the Kessler Woods subdivision. The petitioners intend to construct a 2 1/2-story single-family dwelling with an attached three-car garage. The petitioners propose to fill a significant portion of the rear of the site to allow for the construction of the proposed dwelling and rear yard terracing.

Lot 4 Kessler Way is an "L" shape lot that is fairly flat at the front of the lot but drops off steeply at the rear. The proposed dwelling is located in the steepest part of the lot. The grade will be altered by more than 3 ft. on 2,742 sq. ft. of the 21,028 sq. ft. lot, or approximately 13 percent of the lot area, with a maximum grade change of 12 ft.

## **III. ZONING RELIEF BEING SOUGHT**

*Based on the Chief Zoning Code Official's zoning review, dated June 7, 2007 (SEE ATTACHMENT "A"), the petitioner is seeking approval through:*

- > Section 30-5(b)(4), allows the Board to grant approval to alter the existing contours by more than three (3) ft.;*
- > Section 30-23 for Site Plan Approval, including landscaping; and*
- > Section 30-24(d) for Approval of a Special Permit for grade change.*

## **IV. SIGNIFICANT ISSUES FOR CONSIDERATION**

*In reviewing this petition, the Board should consider whether the alteration of the grade by more than 3 feet will have any adverse affects on the abutters and/or the character of this site in the context of the surrounding neighborhood.*

## V. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

### A. Site

The 21,028 sq. ft. subject property is located at Lot 4 Kessler Way and is currently open and grassy at the front of the lot, becoming more wooded towards the rear as the topography descends down the slope.

The installation of an 8-inch water line during the construction of the subdivision infrastructure resulted in considerable site disturbance at the front and side of the lot. The site includes bordering vegetated wetlands along the rear and most of the proposed residence, as well as nearly all of the proposed regrading work, is within the 100 ft. buffer zone.

### B. Neighborhood

The new roadway and subdivision infrastructure and three single-family residences that are currently under construction or recently completed are all that exists within the Kessler Woods subdivision at this point in time.

The subject property is located near the Brookline/Newton border, in Oak Hill, within a large Single Residence 3 District. The surrounding neighborhood is comprised of single-family dwellings, most of which were constructed in the 1950s. Parcels in the surrounding neighborhood range in size from 7,000 sq. ft. to 14,000 sq. ft., averaging slightly larger than 10,000 sq. ft. The lots within the Kessler Woods subdivision are substantially larger, ranging from approximately 15,000 to 25,000 sq. ft.

## VI. TECHNICAL ANALYSIS

### A. Technical Considerations –Dimensional Controls and Parking

The following table compares the proposed single-family residences to the technical requirements for new lots in a Single Residence 3 District.

<b>SINGLE RESIDENCE 3</b>	<b>REQUIRED</b>	<b>PROPOSED RESIDENCE</b>
Minimum lot size	10,000 sq. ft.	21,028 sq. ft.
Setbacks		
Front	30 ft.	48 ft. 1 in.
Side	10 ft.	10 ft. 6 in
Rear	15 ft.	63 ft. 7 in. (to retaining wall)
Building height	30 ft.	29 ft. 11 in
Max. # of stories	2 1/2	2 1/2
Floor Area Ratio	0.35	0.33
Lot Coverage	30%	16.4 %
Open Space	50%	70.9 %
Number of parking stalls	2 stalls	3
Garage size	700 sq.ft. max.	695 sq. ft.
Driveway width	12 ft. —20 ft.	13.5 ft
Maximum Build Factor	20	10.77

As shown in the table above, the single-family dwelling proposed for Lot 4 will conform to all dimensional controls and parking requirements established for a single-family residence in an SR3 District.

**B. Conservation Commission Review**

The subject lot was part of the Kessler Woods subdivision plan, which was reviewed and approved by the Conservation Commission, as well the Planning Board Acting as the Board of Survey. Aspects of the site plan, such as the footprint of the proposed dwelling (building footprint is about 25% larger than on original "generic" plan and is located closer to the wetlands area), the grading plan, and proposed landscaping have been altered from what was originally approved by the Commission. Most of the proposed residence and nearly all of the regrading work is within the 100-ft. buffer zone to a Bordering Vegetated Wetland. In addition, the proposed plans include a 429 sq. ft. increase in the amount of impervious surface over what was approved in the Subdivision Plan. The table below shows the proposed changes in the total amount of impervious surface.

<b>Impervious Surface</b>	<b>Impervious Area Approved in Subdivision Plan</b>	<b>Proposed Impervious Surface</b>
Roof	2,792 sq. ft.	3,459 sq. ft.
Driveway	1,103 sq. ft.	1,751 sq. ft.
Patio	<b>885</b> sq. ft.	0 sq. ft. (to be constructed of pervious material)
Total	4,780 sq. ft.	5,209 sq. ft.

Based on all of the above changes, the petitioner was required to file updated plans and to seek an amendment to the Order of Conditions. The current plans were reviewed by the Conservation Commission on June 28, 2007.

At the meeting, the petitioner's attorney indicated that although the house is closer to the buffer zone, the proposed retaining walls are at the same distance as originally approved by the Commission, and that all drainage will be contained on-site. Although there was some concern about the residence now being closer to the bordering vegetated wetland area, Commission members noted that they should not be revisiting what was approved under a previous Order of Conditions. Most Commission members were comfortable with the fact that the retaining wall, which is still at the limit of their work, was at the same distance from the wetland area. The Senior Environmental Planner expressed concern that the currently proposed pervious patio area could become compacted over time, possibly as soon as within 5 years of construction, and that the pore spaces could fill so that the area would become less and less permeable. In response, the petitioner's attorney indicated that there would be little traffic in these areas and, as such, there would be limited opportunity for the area to become compacted.

After completing their discussion, the Commission voted to approve the amendment to the Order of Conditions, with the same conditions on drainage as for the original Order. (VOTE: 3-0-2; D. Dickson and N. Richardson abstained).

C. Relevant Site Plan Approval Criteria

1. Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets, properties or improvements, including regulation of the number, design and location of access driveways

A single 13.5-ft. wide driveway entrance is proposed for the site, located at the west edge of the front property line. The driveway is proposed to be constructed of bituminous concrete. The location of the driveway and garage proposed by the petitioners should have no impact on vehicular or pedestrian safety either on-site or in relation to the adjacent streets.

As 12 ft. wide driveways are typically sufficient for single-family residences, and given that the petitioner has increased the amount of impervious surface on this lot, the Planning Department recommends that the driveway width be decreased. Further, the Planning Department suggests that the petitioner consider using gravel, as had been proposed on the recently approved Lot 3, as a means to minimize, if not eliminate, the increase in impervious surface.

Access to single-family dwellings is not typically reviewed by the Fire Department. As such, there is no review memo from the Fire Department on this petition.

2. Adequacy of the methods for regulating surface water drainage

As mentioned above, the petitioners appeared before the Conservation Commission on June 28, 2007, and the Commission voted to approve the current site plan as they believe that the drainage system has been designed such that there should be no adverse impact on the surrounding protected properties, based on the review by the City's Permit Engineer (*SEE ATTACHMENT "B"*).

The Associate City Engineer also reviewed this project. While he notes that the drainage system has been properly designed for a 100-year storm event, he has some questions related to some of the details of the system design. (*SEE ATTACHMENT "C"*). ***Prior to the working session, the petitioner should respond to the issues raised by the Associate City Engineer.***

Although the petitioner is proposing a "pervious" patio and a stonedust path on the east side of the dwelling, the Land Use and Environmental Planning staff are concerned that over time, possibly as soon as within 5 years of construction, such areas could become compacted, causing pore spaces to fill and the area to become less and less permeable. Alternately, in the future due to age, wear, and/or maintenance concerns, the owners may want to replace these materials with impervious surfaces. As the petitioner's attorney has suggested that the patio area would have little use, and as such, would not be likely to be compacted, it is not clear why it is shown on the plans if the owners will rarely use the space. ***If the Board decides to approve this petition, the Planning Department recommends that the Board Order contain clear conditions related to the amount and locations of impervious surface on the site, as any***

***additional impervious surface could adversely impact the drainage system and the abutting wetland areas.***

**3. Screening of parking areas and structure(s) on the site from adjoining premises or from the street by walls, fences, plantings or other means.**

The petitioners submitted a Tree Removal Plan that indicates a total of 11 trees from Lot 4 will be removed for a total of 115 caliper inches. From the submitted plans, it appears that all 11 trees to be removed are within the 100 ft. buffer zone. Although the submitted plan indicates that 115 caliper inches of replacement trees will be provided, this calculation appears to include a tree proposed for the middle of the cul-de-sac. The Planning Department has advised the petitioners that while they are required to comply with the Tree Preservation Ordinance prior to the issuance of any building permits, it is suggested that the landscape plan submitted with the Special Permit should also be acceptable to the Director of Urban Forestry.

The Planning Department is concerned that the landscape plan lacks adequate screening in the rear of the property and believes additional trees should be planted to help screen the abutting residents living on Harwich Road from the proposed new residence and its series of retaining walls.

The Conservation Commission reviewed the petitioners' landscape plan on June 28, 2007 and noted in their meeting that they believed they could not ask for more native species planting beyond what was described on their approved plan. *Given the nature of the site and surrounding area, and since all 11 trees to be removed are within the 100 ft. buffer zone, the Planning Department strongly recommends that the landscape plan be revised to include more native species from the recommended planting list approved by the Conservation Commission.* A comparison of the proposed planting plan for the subject lot against the schematic landscape plan approved for the subdivision shows that while the petitioner included a number of ornamental trees, there appear to be only three flowering trees where four are required.

***Prior to the working session, the petitioners should submit a revised landscape plan that has been reviewed and found to be acceptable, related to compliance with the Tree Preservation Ordinance, by the City's Tree Warden, provides additional landscape screening along the rear of the lot, and overall includes proportionally more native species.***

**4. Avoidance of major topographical changes; tree and soil removal shall be minimized and any topographic changes shall be in keeping with the appearance of neighboring developed areas.**

While this site has some environmental and infrastructure constraints (no construction can take place within the 10-ft. utility easement along the east side of the property and it should be avoided within the Bordering Vegetated Wetland along the rear), the Planning Department believes that the amount of

disruption to the site could be dramatically reduced if the dwelling was designed more appropriately for the existing site conditions and topography.

The Planning Department notes that unlike the recent petition for the abutting Lot 3 where the house was designed for the existing topography, the residence proposed on this site is really suited for a flat site. However, instead of siting the structure on the portion of the lot that is relatively flat, the petitioner has proposed to site the bulk of the structure on a steeply sloped portion of the site.

To overcome the obstacles presented with the design and location of the proposed structure, the petitioners are proposing major topographical changes (fill) to the lot, and a series of retaining walls at the rear of the dwelling to create a system of terraces. All of the retaining walls include a guard rail system along the top of the wall, which are to be constructed of tubular steel with horizontal stainless steel cables running between.

Some of the retaining walls are fairly significant in height. The retaining wall closest to the dwelling will be 4 ft. in height with a 3 1/2 foot guardrail atop it, and will connect to a set of stairs leading to a lower terrace. The retaining wall supporting this lower terrace will be 8 ft. in height, with a 3 1/2 ft. guardrail atop it. The lower terrace will be loamed and seeded, whereas the upper terrace will be finished with an "eco-stone" paved patio.

The petitioner's site plans show the limit of work, however, siltation fence and the haybales with the siltation barrier are located *outside of the petitioner's lot, on abutting properties*. **All work should be contained within the property lines and all erosion controls measures should be located on the petitioner's own lot.** All site plans should be revised so that no activity is taking place outside of the petitioner's lot. The petitioner proposes to install a 5-ft. black vinyl coated chain link fence to prevent any access to or disturbance of the remaining Bordering Vegetated Wetland or its adjacent buffer zone. Given the amount of regrading work proposed and the location of such work in relation to the buffer zone and wetland area, the Planning Department recommends that if the Board approves this petition as proposed, that it be conditioned upon the petitioner providing a detailed construction management plan specifically related to the protection of the environmentally sensitive areas, the existing mature trees, and the vegetation adjacent to the construction area, for review and approval prior to the issuance of any building permits.

It is not clear whether the construction of this structure will require any blasting. ***The petitioner should be prepared to discuss the potential for blasting at the public hearing.***

The Planning Department staff, at the initial development review team meeting and again after the project was filed, ***strongly*** suggested that the petitioners move and rotate the structure in order to minimize the amount of regrading work and to reduce the amount of construction and fill within the 100 ft. buffer

zone. In addition, by moving the structure closer to the front property line, more of the existing mature trees could be retained.

The petitioner, however, decided to proceed with their proposed structure and site location. When the Planning Department staff compared the original concept plans with those filed for the Special Permit, it appeared that the final plans actually included more disruption (fill) in the rear and side yards than originally shown.

Unlike other parcels within this subdivision, this site includes a relatively level area at the front of the parcel, such that it appears that a single-family residence could potentially be constructed with little disruption, if any, to the existing topography and with fewer mature trees and vegetation removed from the buffer zone. ***The Planning Department strongly urges the petitioner to consider alternative designs and locations for the structure, particularly given the amount of level land at the front of the site, in order to preserve as much of the existing topography and mature trees as possible.***

5. Consideration of site design, including the location and configuration of structures and the relationship of the site's structures to nearby structures in terms of major design elements including scale, materials, color, roof and cornice lines

Although the homes in this subdivision will be large, the lots have been planned to be larger than the average existing neighborhood lots. The development covenants for the subdivision require that all newly constructed single-family dwellings must be a minimum of 3,000 s.f. in size. This home as designed is 6,893 on the 1<sup>st</sup> and 2<sup>nd</sup> floor, with another 2,581-sq. ft. in the basement and 1,064-sq. ft. of attic space with a head height of 7 ft. 3 inches. At 0.33, the Floor Area Ratio (FAR) is nearly at the maximum of 0.35. In addition, the building height is within one inch of the 30 ft. limit. In short, this structure is maximized to the fullest extent.

***The Planning Department notes that building materials are not listed on the plans. This information should be submitted prior to or at the Public Hearing.***

Because the structure has a walkout basement and an attic story, from the rear the dwelling will appear to be four stories, with decks on both the 1<sup>st</sup> and 2<sup>nd</sup> floors. The rear elevation, with four stories, two decks, and a series of descending retaining walls, will have a strong visual impact on those viewing the structure from any of the abutting properties to the rear.

A more creative design that put more consideration into the existing topographic conditions could greatly reduce the visual impact of the dwelling and its impact upon the site. Although nothing has been constructed yet on the lots on either side of this proposed residence, the Planning Department has a sense of what will be constructed on the abutting Lot 3 based on the recent petition for that site. In comparing this structure to the one recently recommended for approval



by the Land Use Committee on Lot 3, it does not appear that the scale and design of this structure is consistent with the mass, scale and design of the residence expected to be constructed on Lot 3.

Although not related to this special permit, the approved subdivision includes a self-imposed protective covenant that requires approval of the building design and site improvements on each lot by a Design Review Committee created for this subdivision. The petitioner's plans were approved by this Design Review Committee on June 27, 2007. (SEE ATTACHMENT "D").

***The Planning Department notes that in order to avoid a significant visual impact on abutters, while also reducing the extensive alterations to the grade and the number of mature trees that would need to be removed, the petitioners should consider an alternative design for the residence which is in keeping with the existing topography and pulls the building forward on the lot to where there is more level ground.***

D. Relevant Special Permit Criteria

1. The specific site is an appropriate location for such use and structure

The new dwelling is proposed to be larger than those generally found in the surrounding neighborhood and, in fact, will be larger than any of the previously approved dwellings for Kessler Way. Though a single-family use is appropriate for this location and is consistent with the uses in the surrounding neighborhood, the proposed dwelling is excessive given the constraints associated with the lot and the amount of disruption to the existing topography that is required in order for the structure to comply with the zoning dimensional controls.

A smaller, more creatively designed structure, pulled closer to the front lot line, could sit on the lot with less dramatic changes to the site. The Planning Department tries to direct petitioners to consider building designs and site locations that work with the existing contours and minimize any site disturbance, and finds that this plan does not respond to the existing topography. While these concerns were raised in the Development Review Team meeting prior to the petitioners filing for a Special Permit, it does not appear that the petitioner chose to consider any of the suggested alternatives. The presence of the steep grade at the rear of the site appears to have been viewed as an obstacle to overcome, rather than as a benefit to be preserved.

2. The use as developed and operated will not adversely affect the neighborhood

While the proposed single-family dwelling meets the dimensional zoning requirements for the lot, it does so at the expense of the topography. Although it is possible to engineer the fill with a system of retaining walls, drywells, and stormwater chambers to accommodate the proposed dwelling, the Planning Department believes this particular structure would be better suited to a lot that did not require such dramatic alteration adjacent to a Bordering Vegetated Wetland and within the 100 ft. buffer zone. The Planning Department believes

that the visual impact of what will appear to be a structure with a 4 story rear facade, along with the fill, the retaining walls, and the removal of the mature trees, will have an adverse impact on those viewing the structure from the rear.

## VII. SUMMARY

The petitioners are proposing to alter the grade by more than 3 feet on a significant portion of the subject property in order to construct a single-family residence. The grade will be altered by more than 3 ft. on 2,742-sq. ft. of the lot, or approximately 13 percent of the lot area of Lot 4, with a maximum grade change of up to 12 ft. through a series of terraces. Based on the proposed location of the residence, 11 existing trees (115 total caliper inches) will be removed to accommodate the construction of the house and the fill and terracing along the rear and side yards.

Although the plans indicate that 115 caliper inches of replacement trees are proposed, this appears to include a tree located off-site in the middle island of the cul-de-sac. In addition, it does not appear, based on the proposed design of the structure and the location of the trees, that these replacement trees will provide sufficient screening of the structure and retaining wall system. The Planning Department has suggested to the petitioners that additional screening along the rear portion of the lot might help minimize the visual impacts of the new structure when viewed from the rear. Also, the Planning Department believes that given the nature of the surrounding properties, and particularly because the trees to be removed are all within the 100 ft. buffer zone, more native species should be included in the replacement tree plan.

*As noted throughout this memorandum, the Planning Department has tried to encourage the petitioners to rethink the location and design of the proposed residence in order to work more thoughtfully with the existing topography of the site. Unlike other lots in this subdivision, there is a good portion of the site that is already fairly level and clear of mature trees. By pulling the proposed structure up closer to the front lot line to where the site is more level, the petitioner could significantly reduce the amount of fill that would be necessary to construct a dwelling on this site and preserve more existing mature trees within the 100 ft. buffer zone. This would result in a design that is more in keeping with the existing topography, minimizes the amount of disruption in the 100 ft. buffer zone, and is likely to be more consistent with the structure proposed on the abutting Lot 3, in the process reducing the visual impacts when viewed from the rear.*

*If the petitioner continues with the project, as proposed, then prior to the working session, the petitioner should:*

- 1. At a minimum, reduce the width of the driveway to 12 ft. and should consider alternative driveway materials and/or other ways to reduce the amount of impervious surface on-site;*
- 2. Submit a revised landscape plan with increased screening along the rear and sides of the proposed structure that incorporates more native species;*
- 3. Should provide information on the proposed materials for the residence; and*
- 4. Should respond to the issues raised by the Associate City Engineer.*

## ***Zoning Review Memorandum***

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Dt: June 7, 2007

To: Michael Peirce, representing Eden & Lauren Siff

CC: John Lojek, Commissioner of Inspectional Services  
Michael Kruse, Director, Department of Planning and Development

Fr: Juris Alksnitis, Chief Zoning Code Official

Re: Request for approval of grade change in excess of 3 feet.

<b>Applicant(s): E. &amp; L. Siff</b>	
<b>Site:</b> 36 Kessler Way	<b>SBL:</b> Sect 82, Block 37, Lot 82 aka "Lot 4"
<b>Zoning:</b> Single Residence 3	<b>Lot Area:</b> L-82: 21,028 sq. ft.
<b>Current use:</b> Vacant	<b>Prop. use:</b> Single family

**Background:**

The subject lot is located on the cul-de-sac of Kessler Way, within a new subdivision created as part of an overall plan to develop a part of the former Edison land, aka Kessler Woods, per subdivision plans titled "Kessler Woods - Definitive Plan of Land, Newton Massachusetts, March 17, 2004, last revised July 19, 2004, Sheets 1 — 8, approved by the Planning Board. Much of this area is also subject to certain Conservation Commission requirements as set out in the Order of Conditions pertaining to project DEP# 239-474, including certain plans subsequently approved by the Commission pursuant to the Order of Conditions including a grading plan and landscape plan (see *Conservation Commission documents*, below for complete reference). In addition, the subdivision is subject to development controls set out in the Kessler Woods Protective Covenants. The applicant having purchased the subject lot seeks to build a single-family home for his family and is subject to the above-referenced Covenants. Due to existing topographical conditions, the applicant anticipates altering the existing grade within his Lot 4 (SBL82-37-82) at the rear of the proposed house more than 3 ft. The proposed grade change on the subject lot necessitates a special permit/site plan approval per Sections 30-5(b)(4) and 30-24.

**Administrative determinations**

1. The subject site is comprised of a lot created after December 7, 1953 and is subject to post-1953 dimensional controls applicable to lots in the SR-3 zone. The following review is based on the materials and plans referenced under Plans and Materials Reviewed, below, including recently received revised plans.

2. *Section 30-15, Table 1, Density & Dimensional Controls in Residence Districts and for Residential Uses*, sets forth the applicable density and dimensional controls for new lots in the SR-3 zone. The proposed building meets the applicable controls referenced above. However, extensive stone retaining walls are proposed as part of the 3 ft grade change area, where the greatest change at any one point is 12 ft. Certain segments of the proposed stone retaining walls are located within the 15 ft. rear setback on the south side of the dwelling. These retaining walls range from approximately 0.5 ft. in height above finished grade to approximately 5.5 ft. in height. Placement of a structure within a setback would typically necessitate a dimensional variance from the Zoning Board of Appeals. The applicant has consulted with the Commissioner of Inspectional Services, who has determined that retaining walls which are an integral part of plans designed to handle grade changes in excess of 3 ft. may be addressed as part of the special permit process required for 3 ft. grade changes, and need not also to seek a variance from the Zoning Board of Appeals. The Board of Aldermen may at its discretion approve, modify or disapprove the proposed 3 ft grade change and related retaining walls.
3. *Section 3045(p)* establishes that lots recorded after September 16, 1996 are subject to certain maximum Build Factor (BF) thresholds, depending on the zone wherein located. The attorney for the applicant represents that subject lot has a BF of 10.77 as shown on the approved Kessler Woods Definitive Plan of Land Site Grading & Utility Plan, which meets the SR-3 BF limit of 20.
4. *Sections 30-15(m)(5), 30-19(d)(1), and 30-19(g)* set out the applicable provisions as to garages, parking, and drive. Based on submitted plans, the proposed garage and drive meet these requirements.
5. As shown on plan, a 2,742 sq. ft. area at the rear of the house and along the easterly side will be re-graded, thereby altering the grade in excess of 3 ft. This necessitates approval of a site plan and special permit by the Board of Aldermen per *Section 30-5(b)(4)* for Lot 4.
6. *Section 30-23(b)(6)* in conjunction with *Section 30-24(a)* requires the submittal of a landscape plan. The petitioner has provided a landscape plan including a tree removal and replacement of plan. The petitioner is responsible for complying with *Sections 20-31 through 20-39, Tree Preservation Ordinance* and obtaining approval of the replacement plan by the Tree Warden.
7. It is noted that the proposed dwelling is located substantially within the 100 ft. buffer zone from the bordering vegetated wetlands. The applicant's lot is subject to an existing Order of Conditions issued by Conservation Commission. The petitioner is responsible for obtaining the approval of the Conservation Commission to the extent proposed work will require an amendment of the existing Order of Conditions. The applicant's attorney indicates that a meeting has been scheduled with the Conservation Commission.
8. The Kessler Woods Protective Covenants are applicable to the subject site. The applicant's attorney represents that the proposed plans have been reviewed, and

that the applicant will provide a "Design Review Approval" document. The applicant is responsible for providing this document not later than at the time of filing the petition with the Clerk of the Board of Aldermen.

9. While the applicant has submitted no information pertaining to lighting, the petitioner is responsible for complying with Ordinance X-142, Light Ordinance, as set out in Sections 20-23 through 20-28 with respect to *Light Pollution* and *Light Trespass*, respectively.
10. While the applicant has submitted no information pertaining to fences, the petitioner is responsible for meeting the requirements of *Section 20-40, Regulation of Perimeter Fences*. The proposed railings on retaining walls are not subject to this provision.
11. Certain plans lack the stamp or signature of a registered professional as noted in Plans and Materials Reviewed, below. The applicant is responsible for providing stamped and signed plans not later than at the time of filing the petition with the Clerk of the Board of Aldermen.
12. See "Zoning Relief Summary" below.

<i><b>Zoning Relief Summary</b></i>		
<i><b>Ordinance</b></i>		<i><b>Action Required</b></i>
	N/A	N/A
	Site	
30-5(b)(4)		X
30-23	S - e. .se s . .	X
	N/A	N/A
	<b>Special Permit</b>	
30-24(d)	Approval of special permit for • rade change.	X
	<b>Variances</b>	
30-27 ZBA		

**Plans and materials reviewed:**

- Plan titled "Existing Conditions Plan of Land, Lot 4 - Kessler Woods, in Newton, MA", dated February 22, 2007, last revised March 23, 2007, prepared by Toomey-Munson & Associates, Civil Engineers & Land Surveyors, 89 Access Rd., Unit 12, Norwood, MA 02062, bearing no stamp or signature of a registered professional.

- Plant titled "Lot 4-Kessler Woods", dated 6/4/09, showing area, prepared by Geller DeVellis Inc., 141 Portland St., Boston, MA 02114, stamped and signed by Frank Holmes, Registered Civil Engineer
- Plan set titled "Siff Residence, Newton, MA " dated April 13, 2007, last revised 6/5/07, stamped and signed by Frank Holmes, Registered Civil Engineer, consisting of the following:
  - Sheet ZA-1 – Zoning Analysis
  - › Sheet ZA-2 – Zoning Analysis
    - Sheet L-1 – Layout and Materials Plan
    - Sheet L-2 -- Grading and Utility Plan
    - Sheet L-3 – Planting Plan
    - Sheet D-1 – Details
    - Sheet SP-1 – Site Preparation Plan
- Plan set titled "Siff Residence, 36 Kessler Way, Newton, Massachusetts" dated 4/13/07, prepared by Lowe Architects, Inc., 643 VFW Parkway, Suite 200, Chestnut Hill, MA 02167, bearing no stamp or signature of a registered architect, consisting of the following:
  - Sheet A-1 – Basement & First Floor Plans (Rev. 6/4/07)
    - Sheet A-2 – Second & Attic Floor Plans
    - Sheet A-3 – Building Section
    - Sheet A-4 – Exterior Elevations

#### Conservation Commission documents

- Order of Conditions – Kessler Woods Subdivision, DEP#239-474, dated August 31, 2004, issued by the Newton Conservation Commission.
- Plan titled "Kessler Woods – Definitive Plan of Land, Newton, MA, Roadway, Infrastructure & Related Grading Plan", dated 8/6/04, prepared by H.W. Moore Associates, Inc., Engineers & Planners, 112 Shawmut Avenue, Boston, Mass., 02118-229.
- Plan titled "Kessler Woods, Newton, Massachusetts, Schematic Landscape Plan", Drawing L-S, dated October 14, 2004, last revised 11/9/04, prepared by Mary Smith Associates, P.C., Landscape Architects, 30 Chestnut St., Quincy, MA 02169.

**CITY OF NEWTON**  
ENGINEERING DIVISION

*ATTACHMENT B*

MEMORANDUM

To: Ann Phelps, Senior Environmental Planner (via email)  
Nancy Radzevich, Chief Planner

From: Frank Nichols, PE, Permit Engineer

Re: **Amendment to Order of Conditions — Lot 4 Kessler Woods**

Date: June 26, 2007

CC: John Daghljan, Associate City Engineer (via email)  
Geller Devellis (via email)

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As requested, I have reviewed the submitted Plans and documents relative to a Request to Amend an Order of Conditions for the above-referenced site. Plans and documents reviewed included:

**Documents**

- Original Order of Conditions - Signed: August 31, 2004
- Drainage Report — Dated: June 12, 2007

**Plans**

- Grading and Utility Plan — Dated: June 5, 2007 (Revised: 6.12.07)
- Detail Plan — Dated: June 5, 2007 (Revised: 6.12.07)

Pursuant to Article 28 of the original Order of Conditions, the Applicant is seeking an amended Order of Conditions to accommodate proposed site changes. The proposed modifications include a larger and repositioned primary structure along with a slight increase in other impervious areas. The net change in impervious area is an increase of 429 square feet than that originally proposed.

**Conclusions/Recommendations**

1. Based on the information reviewed, the proposed modifications will not have an adverse affect on the surrounding protected areas.
2. Applicant must adhere to the original Order of Conditions as issued, as well as other conditions deemed necessary by the Commission.

This completes my review of the proposed project. If you require additional information or have any questions please feel free to contact me @ 617-796-1034.

**CITY OF NEWTON  
ENGINEERING DIVISION**

**MEMORANDUM**

To: Alderman George Mansfield, Land Use Committee Chairman

From: John Daghljan, Associate City Engineer

Re: Special Permit – Lot 4 Kessler Woods

Date: July 5, 2007

CC: Lou Taverna, PE City Engineer (via email)  
Nancy Radzevich, Chief Planner (via email)  
Linda Finucane, Associate City Clerk (via email)  
Alexandra Ananth, Planner (via email)

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In reference to the above site, I have the following comments for a plan entitled:

*Siff Residence  
Newton, MA  
Prepared by: Geller DeVellis Inc.  
Dated: June 5, 2007  
Revised: 6-12- '07*

Drainage:

1. The drainage system is properly design for the city's 100-year storm event; however, the narrative of the drainage report indicates that the rear portion of the roof area will be collected and infiltrated on site, this area will require an on site soil evaluation needs to be performed to obtain the seasonal high groundwater elevation, percolation rate in accordance to Title V. The proposed drainage system shall be within (20') of the test pit. The proposed drainage system should be 2' above the seasonal high groundwater elevation.
2. The dry well & storm-chamber details need to specify 3" layer of peastone on top of the system, and then covered over with filter fabric.



Water:

- The proposed water service is shown as a 2" service this will require the approval from the Utilities Division, typically a 1-1/2" copper service is the largest allowed. Also note that each lot has a 1" service stub.

Sewer:

1. A detailed profile is needed which shows the existing water main, proposed water service(s), sewer main and proposed sewer service(s) with the slopes and inverts labeled to ensure that there are no conflicts between the sewer services and the water service. The minimum slope for a service is 2.0%, with a maximum of 10%. Pipe material shall be 6" diameter SDR 35 PVC pipe within 10' of the dwelling then 4" pipe per Massachusetts State Plumbing Code.
2. The City does not allow bends in the service connection, if a bend is needed it shall be accomplished via a standard sewer manhole.

General:

1. All tree removal shall comply with the City's Tree Ordinance.
2. Is the dwelling to be serviced by gas, if so the locations of the services need to be indicated so that there are no conflicts with between the proposed utilities.
3. The contractor is responsible for contacting the Engineering Division and scheduling an appointment 48 hours prior to the date when the utilities will be made available for an inspection of water services, sewer service, and drainage system installation. The utility in question shall be fully exposed for the inspector to view; backfilling shall only take place when the City's Inspector has given their approval. *This note should be incorporated onto the plans*
4. The applicant will have to apply for Utilities Connecting Permit with the Department of Public Works prior to any construction. *This note must be incorporated onto the site plan.*

5. The applicant will have to apply for a Building Permit with the Department of Inspectional Service prior to any construction.
6. Prior to Occupancy permit being issued, an As-Built Plan shall be submitted to the Engineering Division in both digital format and in hard copy. The plan should show all utilities and final grades, any easements and final grading. *This note must be incorporated onto the site plan.*
7. If a Certificate of Occupancy is requested prior to all site work being completed, the applicant will be required to post a Certified Bank Check in the amount to cover the remaining work. The City Engineer shall determine the value of the uncompleted work. *This note must be incorporated onto the site plan.*

If you have any questions or concerns please feel free to contact me @ 617-796-1023.

Kessler Way Lot 4, a/k/a 36 Kessler Way, Newton, MA

**KESSELER WOODS  
NEWTON, MASSACHUSETTS  
DESIGN REVIEW APPROVAL**

**ATTACHMENT D**

On this \_\_\_\_ day of June, 2007 the undersigned hereby approves the plans submitted on \_\_\_\_\_, 2007 for the construction of improvements and structures on Lot 4 by Lauren Zuker Siff in accordance with the provisions of the Kessler Woods, Newton, Massachusetts Protective Covenants recorded with the Middlesex South Registry of Deeds in Book 44808, Page 337.

Said approval is subject to certification by the undersigned upon the completion of construction that said structures and improvements have been completed substantially in compliance with the herein referenced approved plans.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 77<sup>th</sup> day of June, 2007.

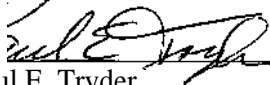
DESIGN REVIEW COMMITTEE:

Declarant:

C/S Kessler, LLC

By: Cornerstone Manager, Inc.

By:

  
Paul E. Tryder  
Its President  
Duly Authorized

City of Newton:

By: \_\_\_\_\_  
Director of Planning and Development

Architect for Declarant:

By: \_\_\_\_\_

*-r; ,lc s.hui\_ra3,-  
-rAz kgrAdiseru<sup>p</sup>m- TRAP',*

COMMONWEALTH OF MASSACHUSETTS

Suffolk County

: 27, 2007

On the 32 day of July, 2007 before me the undersigned Notary Public then personally appeared before me above named imiikg. #01-TE71 and proved to me through satisfactory evidence of identification, which was \_\_\_\_\_ to be the person whose name is signed on the preceding or attached document and acknowledged to me that he signed it voluntarily for its stated purpose.

Donna E. Sulivan

Notary Public

My Commission Expires



DONNA E. SULIVAN  
NOTARY PUBLIC  
Commonwealth of Massachusetts  
My Commission Expires on  
September 9, 2010

COMMONWEALTH OF MASSACHUSETTS

County

, 2007

On the \_\_\_\_\_ day of \_\_\_\_\_, 2007 before me the undersigned Notary Public then personally appeared before me the above named \_\_\_\_\_ and proved to me through satisfactory evidence of identification, which was \_\_\_\_\_ to be the person whose name is signed on the preceding or attached document and acknowledged to me that he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public

My Commission Expires